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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Computer III Further Remand Proceedings )  
Bell Operating Company ) CC. Docket No. 95-20  
Provision Of Enhanced Services )

1998 Biennial Regulatory Review- )  
Review of Computer III and ONA ) CC. Docket No. 98-10  
Safeguards and Requirements )

REPLY COMMENTS OF ARTHUR EVANS, Pro Se

266 Jericho Turnpike, Suite F  
Floral Park, New York 11001

April 30, 2001

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List A B C D E

In its notice of March 7, 2001, the Commission has asked parties to "update and refresh the record" since prior comments were filed in response to the Commission's January 30, 1998 Further Notice Of Proposed Rulemaking (FNPRM). In Reply comments, I ("98 REPLY") filed on April 23, 1998, I opposed Bell Atlantic's requested modifications to the Commission's ONA, CEI and other then in effect Computer Two and Three Docket regulations, based upon the New York State Public Service Commission's (PSC) finding that the New York Telephone Company, (subsequently dba Bell Atlantic and Verizon and hereinafter referred to as either Bell Atlantic and/or Verizon) had been found guilty of gross negligence for a botched switch cutover and willful misconduct against 976 Prefixed Voice information for its deception (for over one decade) of "unauthorized Autrax call count adjustments." (see 4/23/98 Reply Comments Of Arthur Evans, Exhibit 1- Pages 2, 3, 6, 7, located at Record #71 of the Commission's Electronic Comments Filing System Record, in this Docket, also see Note #1.

Note #1: See 1997 N.Y. PUC LEXIS 320, 1997 N.Y. PUC LEXIS 479, 179 Misc. 2d 301; 684 N.Y.S. 2<sup>nd</sup> 829 (1998, Supreme Court Of N.Y.)

POINT #1: BELL ATLANTIC's CLAIMS (BOTTOM PAGE SIX OF COMMENTS AND ELSEWHERE) THAT INFORMATION SERVICES COMPETITION HAVE NOT BEEN HARMED ARE BOGUS. AND GIVEN VERIZON's BOTH (a): TOTAL FAILURE TO FILE OR COMPLY WITH THE AGENCY's CEI PLAN REQUIREMENTS, WITH REGARDS TO AUDIOTEXT SERVICES, and (b) RETALIATORY ACTIONS TO SHUT DOWN OF ALL AUDIOTEXT- TELEPHONIC INFORMATION PROVIDERS IN NEW YORK STATE USING ITS INFOFONE SERVICES, the COMMISSION SHOULD CONDUCT AN INVESTIGATION OF VERIZON's PRIOR CONDUCT WITH REGARDS TO INFORMATION PROVIDERS, TO ENABLE A STRENGTHENING OF OR ADDITIONAL REGULATIONS GOVERNING VERIZON's PROVISION OF INFORMATION SERVICES

And although it with great regret that I am herein responding to this further notice for the purpose of continuing to oppose Verizon's requested relaxation of the Commission's regulation as further enunciated in its April 16, 2001 comments, I am doing so for just cause. Given Bell Atlantic's and Verizon's 1998-1999 retaliatory actions to make bogus claims of a service affecting Year 2000 Problem and continuing inaccurate call count claims in order to obtain a state order which will soon shut down the entire 976 industry (note #2) as well as all other competitive users of Verizon other bottleneck INFOFONE services, (which in 1997 handled an estimated 40 million calls), such Verizon conduct, warrants that it be denied any consideration for relief from prior Computer- Two and Three Docket regulations, pending the conduct by the COMMISSION of a full enforcement investigation to review Verizon's retaliatory (Note #3) conduct in its almost completed shutdown of this country's second most widely used facilities and services for the provisioning of mass consumer information accessible via the telephone. Note, moreover that New York Telephone Company, now Verizon, never even bothered

to file a CEI Plan with the FCC, even though it owns several 976 Services, and installed an enhanced information access and voice storage, platform in 1990 to serve 976 news providers not withstanding its further total failure to file any notice with COMMISSION regarding the disconnection of such enhanced platform in 1999, See Exhibit #1.

Note #2: See 1999 N.Y. PUC LEXIS 279 and 1999 N.Y.PUC LEXIS 173

NOTE #3: Verizon's retaliated against the 976 information industry (with the full cooperation of the New York State Public Service Commission) for this industry's administrative and subsequent litigation actions related to the aforementioned gross negligence/ willful misconduct findings, See Exhibit #2 and subsequent exhibits.

Point #2: Sections 257 and Sections 251 (g) of the ACT and the Commission's CEI and COMPUTER II and Computer III Regulations, require the COMMISSION to investigate Verizon's misconduct in the information services industry and its shutdown of competitor information providers. Clearly Verizon should not be entitled to any elimination or reduction of regulations, especially since it never complied with them with regards to the affected services which are our nation's second most popular telephonic information services (second to 900 Services) and continue to receive interstate calls from non-blocking interexchange carriers from around the Country, see 1994 N.Y. PUC Lexis 1 \*49. Moreover, pursuant to Section 251 (g) of the Act, these regulations remain in effect. Moreover, had Judge Greene, known of Verizon's ongoing misconduct against information providers in 767 F. Supp 308, see Note 121, it is doubtful that the subject utility would have received permission from the Court to provide information services at all.

Most importantly, Congress in drafting the language in Section 257 and 251g of the Act has directed this agency to enact and enforce regulations and conduct the requested investigation which will stop Verizon from its pending shut down of its INFOFONE facilities and services, which if not prevented, will create a violating market entry barrier for both existing and future information providers for years to come.

ALL PARTIES

Sincerely Yours,  
Arthur Evans

2 copies to Janice Myles

ER#1

Federal Communications Commission  
Washington, D.C. 20554

August 16, 2000

Mr. Arthur Evans  
266 Jericho Turnpike, Suite F  
Floral Park, NY 11001

Dear Mr. Evans,

In response to your inquiry, the Policy and Program Planning Division of the Common Carrier Bureau does not have any record of a Comparably Efficient Interconnection Plan filed by New York Telephone (NYNEX) or Bell Atlantic, at anytime between 1990 and 1999, that addresses the offering or discontinuance of enhanced "976 Information-Mass Announcement Services."

Sincerely,



Jodie Donovan-May  
Attorney-Advisor  
Policy and Program Planning Division  
Common Carrier Bureau

ER 2

DRAFT

**Privileged and Confidential - Prepared for Use of Counsel  
Executive Summary**

Case 98-C-1079  
PPI-BA-NY-107

Attachment

**Prologue**

This document is intended as a tool for the Business Marketing organization to evaluate projected revenues and costs over a five year planning period associated with the three primary services provided by the New York IMAS Ericsson switch. These services are Mass Announcement Service (976), Interactive Information Network Service (IINS) and Group Bridging Service (GBS). Costs include estimates to provide a replacement for the existing switch to be Year 2000 compliant. Multiple configurations were considered. Costs included are for planning purposes only and are not intended as docket quality documentation.

Bell Atlantic provides similar services elsewhere in the region. Each jurisdiction has unique service, cost and network considerations. However, due to the urgency of the Year 2000 issue in New York, Business Marketing has focused its initial assessment there. Other jurisdictions will be evaluated in future analyses to determine the overall viability in each jurisdiction.

→ Estimated revenues, configurations and associated costs are outlined below. Risks must be considered regarding the viability of the product, outside the fully distributed service costs assessment. Due to the unique nature of this service, the New York PSC has played a key role in the requirements placed upon Bell Atlantic. PSC orders and litigation are highlighted on pages five and six. From a financial perspective, the most significant of these issues are the four RICO lawsuits currently pending, where damages with interest and legal fees could be as high as \$100M. While a decision to exit the product would not eliminate the current orders or legal proceedings, it is reasonable to assume that continuance of the product would require Bell Atlantic to implement future PSC orders and the threat of litigation would continue to exist.

Despite the costs associated with the provisioning of a new switch, and our internal acknowledgment of financial risks associated with the product, Bell Atlantic must anticipate that the New York PSC is likely to be unsympathetic to cost issues and may advise Bell Atlantic to recover its costs elsewhere. In several recent orders, Bell Atlantic was advised to recover costs through the exogenous cost study process. It is critical that a decision to exit must be accompanied by a Legal/Regulatory strategy which is not service cost based. Similarly, while this document satisfies the internal requirement to assess the overall viability of the product line, it is not suitable for withstanding an extensive evaluation by the PSC for cost study purposes.

**Background**

The Year 2000 is rapidly approaching. It has already had a significant impact on every industry in the world, especially every computer-based or related transaction system. The IMAS Ericsson switch in Brooklyn will be no exception. This switch has not been upgraded for several years. Bellcore has verified that the existing release and two subsequent releases cannot handle the new millennium, leaving no doubt that the Ericsson and the services which depend upon it are in great jeopardy.

Notice: Not intended for disclosure outside Bell Atlantic

BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

EX #121

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In the Matter of CASE 98-C-1079  
Proceeding on Motion of the Commission CASE 98-C-1079  
to Investigate New York Telephone Hon. R. Epstein  
Company's Proposal to Discontinue  
Offering Information Services

---

PREPARED PANEL TESTIMONY OF:

PATRICIA M. CURRAN  
Associate Policy and  
Compliance Analyst  
Consumer Services Division

DOUGLAS E. SIEG  
Chief Communications  
Rates Analyst  
Tariff & Rates Section  
Communications Division

New York State Department  
of Public Service  
Three Empire State Plaza  
Albany, New York 12223

Dated: December 11, 1998

CASE 98-C-1079

DIRECT TESTIMONY OF  
DEPARTMENT OF PUBLIC SERVICE STAFF

1 would re-home information services trunks on a 5 ESS switch  
2 in the West 18th Street central office in Manhattan.

3 However, all of this should be transparent to the non-MAS  
4 IPs.

5 Q. Is New York Telephone's proposed transition for MAS services  
6 appropriate?

7 A. No, NYT's proposal would basically gut MAS of its most <—  
8 important feature of being a simple, inexpensive vehicle by  
9 which consumers can obtain a wide variety of information.  
10 This is because under the NYT proposal, the unique billing  
11 and collection arrangement now in effect for MAS would be  
12 gone, and it is not apparent that IPs could duplicate it  
13 through the use of other billing and collection means, while  
14 maintaining current or similar rates.

15 Q. How should New York Telephone provide Mass Announcement  
16 Services during the service transition period?

17 A. Staff proposes that if NYT continues to be unable to see its  
18 way clear to operating the Ericsson switch beyond December  
19 31, 1999, the company should be required to place new  
20 equipment at a location which would enable the continued  
21 provision of a broadcast-type of MAS service under the  
22 existing MAS tariff, and which would have minimal negative  
23 impact on the MAS IPs' operations, revenues, or customers.

24 Q. What type of equipment configuration do you envision?

EX #13

CASE 98-C-1079

DIRECT TESTIMONY OF  
DEPARTMENT OF PUBLIC SERVICE STAFF

1 will be pre-filed and, hopefully, about 2 3/4 years and 4  
2 3/4 years, respectively, after the Commission will have  
3 reached a decision in this proceeding. Staff believes these  
4 time periods to be fully adequate for IPs to plan for  
5 alternatives, i.e., exiting the market, self-providing the  
6 services, or having other entities provide the non-  
7 bottleneck portions of these services. Staff selected  
8 January 1, 2004 for the billing and collection sunset  
9 because there appears to be no viable alternatives for  
10 billing and collection, especially for 976 services.

11 Q. Should NYT's information services be "grandfathered" in the  
12 interim?

13 A. No, grandfathering will limit the number of information  
14 service providers for an interim period, and it may lead to  
15 a limitation of existing customers as well. Grandfathering  
16 is usually permitted when a service is nearing its life's  
17 end, but there are existing customers that would be  
18 irreparably harmed if the service were suddenly and  
19 completely withdrawn. In this case, it is not clear that  
20 these services are nearing the end of their lifespans. What  
21 is clear, however, is that NYT wants to sunset its  
22 involvement in the provision of these services. NYT  
23 indicates that information services in which it is involved,  
24 Mass Announcement Services (MAS) in particular, have been in



Affidavit

BEFORE THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Case 99 civ.6018

AFFIDAVIT OF ROBERT SCHECHTER

---

ARTHUR EVANS AND ARTHUR EVANS, Doing Business as Family Telephone  
Network,

PLAINTIFF v.

NEW YORK STATE PUBLIC SERVICE COMMISSION, NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE, ET AL

---

STATE OF NEW YORK:

COUNTY OF KINGS

---

Robert Schechter, President of NY Phone Results, Inc. deposes and says:

1. I am the President of NY Phone Results, Inc., an information provider, operating a 976 number under the auspices of Verizon.
2. I was induced to sign the settlement agreement in Case 98-C-1079 by the assurances of both the New York State Public Service Commission and Bell Atlantic, that my long outstanding complaints against the phone company pending before the Commission would be expeditiously resolved.
3. I felt that signing the agreement was not in my best interest, if my complaints were not resolved. I signed the agreement only after being assured by Chris Hanifan, of the Public Service Commission, that my complaints would be resolved expeditiously once the agreement was signed and approved.
4. Bell Atlantic contacted me to convey their desire to resolve my complaints immediately after the agreement was signed and approved.
5. Chris Hanifan advised that it was unlikely that the agreement would be approved by the Commission without my signature.
6. Based on the representations made by both the Commission and Bell Atlantic, I signed the agreement in Case 98-C-1079.

EX #2-5

7. The agreement specifically stated that "BA-NY will use its best efforts to work to resolve the following pending issues, with the current IP parties:
- (a) Ring No Answer;
  - (b) Intercept Message
  - (c) Excise tax, to the extent permitted by law; and
  - (d) Current (as of January 11, 1999) individual IP complaints pending before the Department of Public Service

The parties to a pending complaint before the Department of Public Service will resolve such pending complaint within ten (10) days from the Commission approval of this Joint Proposal. If such complaint is not resolved within ten (10) days, either party to the dispute may seek resolution before the Department's Office of Administrative Hearings ("OAH") for mediation or arbitration. Both parties shall agree to participate before the OAH for resolution and will participate in conformance with all procedures and requirements of the Administrative Law Judge in the OAH."

8. Once the agreement was signed and approved by the Commission, Bell Atlantic advised that their long stated position of unwillingness to resolve the outstanding complaints was unchanged, contrary to the representations made when attempting to induce me to sign the agreement.
9. I contacted Chris Hanifan of the Public Service Commission to advise that Bell Atlantic had apparently reneged on their stated desire to resolve the outstanding complaints and "move on". Chris Hanifan advised that there was nothing he could do other than to advise that I follow the terms of the agreement and request arbitration.
10. I contacted the Commission to request arbitration as outlined in the agreement.
11. I received a letter from the Administrative Law Judge assigned to the matter, stating that she expected to resolve the matter by "early June 1999". (copy of letter attached)
12. As of today's date, nearly two years after the approval of the joint proposal, none of my complaints have been resolved, despite my best efforts.
13. I was induced to sign the agreement under false pretenses, relying on the false representations of the Commission and Bell Atlantic.
14. I would never have signed the agreement, which I felt was extremely unfavorable to my company, had I not been assured of the prompt resolution of my complaints by the Commission and Bell Atlantic. In addition, I felt pressured to sign the agreement to preclude Bell Atlantic's threatened shut down of the service at the end of 1999, allegedly due to Y2K problems, problems which seemed to be very easy rectifiable if so desired by Bell Atlantic, simply by setting the clock back on the system's computer.

EX #2-6

15. My rights have been violated, and my business has been damaged, and continues to be damaged, by the violation of the terms of the joint proposal in Case 98-C-1079 as noted above. I feel the joint proposal should be overturned.
16. Attached hereto and made a part hereof for all purposes are letters in support of this affidavit.

I hereby swear and affirm that the factual information contained in this Affidavit is true and correct to the best of my knowledge and belief.

  
Robert Schechter

Subscribed and Sworn to this 1<sup>st</sup> Day of March 2001

  
KIMBERLY J. FICK  
JUDICIAL PUBLIC STATE OF NEW JERSEY Public  
MY COMMISSION EXPIRES JUNE 1, 2003

My Commission Expires \_\_\_\_\_

EXHIBIT

2-7

Date: Nov 13 1998

To: R. Epstein (RAE)

From: C. Hanifin (CJH)

\* Orig: 11/13/98 12:27 pm \*\*

\* RAE: R. Epstein \*\*

\* Original Id: F10BX7HN \*\*

98C1079 MAS confirm 12/17

\* Annot: 11/13/98 12:36 pm \*\*

\* RAE: R. Epstein \*\*

PS - no 12/17 Ethics & Eggnog Festival for Chris, I guess.

\* Reply: 11/13/98 12:39 pm \*\*

\* CJH: C. Hanifin \*\*

I have no Ethics, but I love Egg Nog.

**PURSUANT TO THE PROVISIONS OF THE Data Administrator's Privacy Act, NOTICE is hereby given of the following matter:**

Statements and analyses are not required with this notice because proposed rule is within the definition contained in section 102C(X)(X) of State Administrative Procedures Act.

PR-C-10792A1)

**MC-10793A11**

Comments

EXHIBIT #2-4

DAVIS WEBER & EDWARDS P.C.

100 PARK AVENUE  
NEW YORK, N.Y. 10017

(212) 685-8000  
TELECOPIER: (212) 916-7200

WRITER'S E-MAIL ADDRESS:

June 1, 1999

Case No. 98-C-1079

SHIRLEY R. BROWN  
JAMES C. HANSEN  
R. JOHN COOPER  
DONALD B. CLARKE  
ELIZABETH A. JONES  
FRANK T. BROWN  
NORMAN S. LEVY

CONFER

THIS SUBMITTED VERSION, DATE: 1/20/99  
VIA E-MAIL DELIVERED TO: JUDGE  
HON. JUDGE J. J. LEE  
(305) 375-0400  
TELEPHONE (305) 375-0400

WRITER'S E-MAIL ADDRESS:  
916-7201

C/IG-FIVE  
C98-5-1079  
6 COPIES OF  
FOR STATE USE

DAVID DAVIS  
JAY E. GORDON  
STEPHEN M. EDWARDS  
THOMAS J. SWEENEY, III  
FRANK T. BROWN  
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JAMES D. STYNGER  
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GUYTON A. FORD  
GEORGE H. TRACY, III  
WILLIAM F. HANSEN  
DAVID F. WOODWARD  
GEORGE A. SALTER  
LINDA M. TREYER  
SARAH C. COHENFIELD  
JOHN HENDERSON POPE

Dear Secretary Renner:

I am writing on behalf of Larry Weiss Associates, Inc., National Telephone Enterprises, Inc. and certain other information providers to object to certain portions of the Notice of Emergency Adoption and Notice of Proposed Rule Making which was filed by the New York Public Service Commission pursuant to the provisions of the State Administrative Procedure Act.

First, although the Notice states that the emergency rule is necessary for the preservation of general welfare, in fact, with all due respect, it cannot reasonably be said that the February 10, 1999 Opinion and Order 99-5 was necessary for the general welfare.

The Opinion and Order was entered following an announcement by Bell Atlantic d/b/a Bell Atlantic - New York Telephone Co. ("BA-NY") that it intended to terminate its InfoFone service in August 1999. The InfoFone service has provided valuable, low cost time, weather, sports, lottery, employment assistance, social bulletin boards, adult entertainment and other information services on demand for many decades. In 1997, InfoFone service providers received approximately 40 million calls.

In its Opinion and Order, the New York Public Service Commission, in response to a settlement agreement signed by BA-NY, PSC Staff, and some, but not all, information providers, agreed to permit BA-NY to terminate its InfoFone service but required BA-NY to continue to provide the service for five years before it would be permitted to terminate the service. While a five year termination period is more in the public interest than a one year termination period, in no sense can the termination of this valuable long term service be said to be in the public interest. Respectfully, in that respect, the Notice is inaccurate.

Second, a portion of paragraph 8 erroneously states that one purpose of the rule is to permit BA-NY to initiate a five-year phaseout of its discretionary services to information providers. Respectfully, the purpose of the rule is to permit BA-NY to initiate a five-year phaseout of its InfoFone service. No determination was ever made with respect to discretionary

DAVIS WEBER & EDWARDS P.C.

EXH1617 2-10

services in general, however they may be defined, and it is inaccurate to state that the Opinion and Order addressed anything broader than the InfoFone service itself, as defined by applicable tariffs.

Finally, although the SAPA notice states that the "Ericsson switch now in use is not Y2K compliant; continued use of the switch would jeopardize reliable service not only to information providers but throughout the company's network," this statement was also found to be inaccurate. BA-NY's contention regarding the Ericsson switch was vigorously challenged by many of the InfoFone information providers and the issue was never resolved by litigation. There was never a hearing or a determination based on live testimony subject to cross examination on this issue.

In view of this, the Commission cannot now assert that the Ericsson switch was not Y2K compliant. The most that the Commission can say is that BA-NY contended that the Ericsson switch was not Y2K compliant. Accordingly, the SAPA notice should be modified to state only that BA-NY contended that the Ericsson switch was not Y2K compliant and that BA-NY also contended that continued use of the switch would jeopardize reliable service to information providers and throughout the company's network, but that no final determination on that disputed issue was made. All references in the Ericsson switch not being year 2000 compliant should be deleted.

Thank you for your attention to this matter.

Respectfully submitted,

*Norma B. Levy / dml*

Norma B. Levy

The Honorable Debra Renner  
Acting Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

BY HAND